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FILED
HARRISBURG
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,
Plaintiff

NOV 21 2001
MARY E. D'ANDREA, CLERK
No. 1:CV-00-0895
Smyser, Magistrate Judge

v.

(Magistrate Judge Smyser)

ROBERT W. MEYERS, et al.,
Defendants

PRETRIAL MEMORANDUM FOR DEFENDANTS

There was no pretrial attorneys conference because plaintiff is proceeding
pro se.

A. Jurisdiction

Plaintiff invokes the jurisdiction of the Court pursuant to 28 U.S.C.
§1343 as this is a civil rights action brought under 42 U.S.C. §1983.

B. Summary of Contentions

Plaintiff alleges that his Eighth Amendment rights were violated by
employees of the Pennsylvania Department of Corrections ("DOC")
because he was placed in a cell at the State Correctional Institution at
Rockview with a cellmate who smokes cigarettes and his requests to be
moved to a non-smoking block were not granted until April 2001 when he
was transferred to a non-smoking block. In particular, plaintiff alleges that
he suffers from asthma, that as a result of exposure to environmental

tobacco smoke his asthma was aggravated, and that the DOC employees were deliberately indifferent to plaintiff's medical need by not transferring him when he desired. Plaintiff seeks both damages and injunctive relief. The defendants maintain that they were not deliberately indifferent to a serious medical need of the plaintiff. While they acknowledge that plaintiff has an asthmatic condition, his condition was treated appropriately. In addition, defendants were not advised of a medical necessity for plaintiff to be placed on a non-smoking block during the relevant period of time. While he was housed on the smoking block, efforts were made to accommodate plaintiff's requests to share a cell with a non-smoker, consistent with the security and housing needs of the institution. When plaintiff was medically cleared for the non-smoking block, he elected to remain on the smoking block rather than abide by the rules on the non-smoking block. Defendants assert, therefore, that plaintiff cannot satisfy the objective and subjective components of the Eighth Amendment standard. Furthermore, defendants maintain that plaintiff cannot satisfy the standards for a permanent injunction since there are no plans to place plaintiff on a smoking block.

C. Statement of Undisputed Facts

Since there was no pretrial attorneys conference, there was no joint statement of facts prepared; however, the DOC defendants believe the following facts are undisputed:

1. Plaintiff is serving a 4 - 15 year sentence for convictions of aggravated assault, possession of instruments of crime and other offenses.
2. Plaintiff was transferred to SCI-Rockview from SCI-Greensburg in May of 1999.
3. Between May of 1999 and April of 2001, plaintiff was housed in various locations at SCI-Rockview, including A-block, the Restricted Housing Unit (RHU), the infirmary and the mental health unit, and a three-week transfer to SCI-Waymart.
4. Plaintiff was given the opportunity to transfer to the non-smoking block in February 2001, but he declined.
5. Plaintiff was transferred to the non-smoking block on April 30, 2001.

D. Damages

Plaintiff claims entitlement to compensatory and punitive damages.

Defendants maintain that plaintiff is entitled to no damages.

E. Witnesses

1. Robert W. Meyers
2. Terry L. Whitman
3. Jeffrey A. Rackovan
4. John M. Allar
5. Robin L. Kerstetter
6. Larry Lidgett, R.N.

F. Experts

None to be called by defendants.

G. Specific Comments About Pleadings

None.

H. Summary of Legal Issues

1. Whether defendants were deliberately indifferent to a serious medical need of the plaintiff?

Wilson v. Seiter, 501 U.S. 294, 298 (1991)

Hudson v. McMillian, 503 U.S. 1, 8 (1992)

Helling v. McKinney, 509 U.S. 25, 36 (1993).

2. Whether defendants are entitled to qualified immunity from damages?

Saucier v. Katz, 533 U.S. 194 (2001)

Harlow v. Fitzgerald, 457 U.S. 800 (1982).

3. Whether plaintiff can satisfy the standards for permanent injunctive relief?

Rosetti v. Shalala, 12 F.3d 1216, 1224 (3d Cir. 1993) (standing).

Shields v. Zuccarini, 254 F.3d 476, 481 (3d Cir. 2001) (merits).

4. Whether plaintiff is entitled to punitive damages?

Memphis Community School District v. Stachura, 477 U.S. 299, 306 (1986).

Smith v. Wade, 461 U.S. 30, 54 (1983).

I. Stipulations Desired

1. Documents are authentic.
2. Photocopies may be used in lieu of originals.

J. Estimated Number of Trial Days

Defendants estimate the case can be tried in one (1) to one and a half (1½) days.

K. Other Matters

None.

L. Exhibit List

Attached.

M. Special Verdict Questions

None submitted

N. Certification

Counsel for defendants certify that the persons with settlement authority have been notified of the requirements of the Local Rules.

O. Discovery Certification

Not applicable.

P. Non-Jury Trials

Not applicable.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:


MARYANNE M. LEWIS
Deputy Attorney General

By:


GREGORY R. NEUHAUSER
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Chief, Litigation Section

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Harrisburg, PA 17120
717-787-8106

DATE: November 21, 2001

MAGISTRATE JUDGE SMYSER

EXHIBIT LIST - MONTAGUE v. MEYERS, et al.

MIDDLE DISTRICT, PENNSYLVANIA

DATE:

Pltf.	Deft.	Description of object or item	Identified	Evidence	Ruling	Witness on stand
	A	SCI-Rockview Contract for Residence On the Smoke Free Unit.				
	B	Medical Records of Terrance Montague from May, 1999 to May 2001.				
	C	Inmate Requests to Staff Member (Inmate Grievances) submitted by Terrance Montague from May, 1999 to October 31, 2001.				
	D	Inmate Misconduct Report No. A 49157.				
	E	Inmate Bed Assignment System Log for Terrance Montague from May, 1999 to April 30, 2001.				
	F	Transcript of Deposition of Terrance Montague dated April 27, 2001.				

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TERRANCE MONTAGUE, :
Plaintiff :
: No. 1:CV-00-0895
v. :
: (Magistrate Judge Smyser)
ROBERT W. MEYERS, et al., :
Defendants :
:

CERTIFICATE OF SERVICE

I, **GREGORY R. NEUHAUSER**, Senior Deputy Attorney General
for the Commonwealth of Pennsylvania, Office of Attorney General, hereby
certify that on **November 21, 2001**, I caused to be served a true and correct copy
of the foregoing document **Pretrial Memorandum for Defendants**, by depositing
it in the United States mail, first-class postage prepaid to the following:

Terrance Montague, BZ-2761
SCI-Rockview
Box A
Bellefonte, PA 16823-0820



GREGORY R. NEUHAUSER
Senior Deputy Attorney General